## APPENDIX A

## OPINIONS BELOW

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

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No. 104—October Term, 1957.

(Argued December 10, 1957 Decided May 6, 1958.)

Docket No. 24665

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UNITED STATES OF AMERICA,

*Appellee,*

v.

WALTER F. TELLIER, ALBERT JOSEPH PROCTOR,

*Defendants-Appellants,*

ELTON B. JONES and ALASKA TELEPHONE CORPORATION,

*Defendants.*

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Before:

MEDINA, LUMBARD and WATERMAN,

*Circuit Judges.*

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Defendant-appellants were convicted by a jury, Eastern District of New York, Byers, *J.* Defendant Tellier appeals alleging that specific reversible errors prejudicial to him occurred during the trial. Defendant Proctor appeals setting forth that there was insufficient evidence to warrant submission of the case against him to the jury. Affirmed as to both defendant-appellants.

CORNELIUS W. WICKERSHAM, JR., U. S. Atty., E. D. N. Y. (Paul Windels, Jr., Spec. Asst. U. S. Atty., Julian Guy Linker, Asst. U. S. Atty.) *for Appellee.*

RICHARD J. BURKE, J. BERTRAM WEGMAN (Saul Gordon, N. Y. C., Frederick Bernays Wiener, Washington, D. C., of Counsel), New York City, *for appellant Tellier.*

COLTON & PINKHAM, New York City, *for appellant Proctor.*

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WATERMAN, *Circuit Judge:*

The appellants, Walter F. Tellier and Albert J. Proctor, were tried and convicted upon a thirty-six count indictment charging them with violations of the fraud section of the Securities Act of 1933, 15 U. S. C. 77p(a); with violations of the mail fraud statute, 18 U. S. C. §1341; and with a conspiracy to violate each of these statutes, 18 U. S. C. §371. The charges in the indictment arise out of the public sale of four series of debentures during the years 1951 through 1955. Tellier, who received concurrent sentences of four and one-half years on each count and was fined a total of $18,000, does not contest the sufficiency of the evidence against him. He does contend, however, that reversal is required because of allegedly erroneous rulings made by the trial judge during the course of the trial. Specifically, it is claimed that the trial court erred in permitting testimony Tellier alleges was a violation of the attorney-client privilege, and also erred in the following: (1) the admission into evidence of the corporate records of Alaska Telephone Corporation (ATC), (2) the exclusion of evidence pertaining to the financial condition of ATC at the time of trial, (3) the failure of the trial judge to order production of a report made by a government witness, and (4) the failure of the trial judge to give a requested instruction. Proctor, who received suspended concurrent sentences of nine months on each of

the counts in the indictment, contests only the sufficiency of the evidence to support the verdicts against him.

ATC was formed in 1948 to acquire and operate independent telephone and electric power systems in Alaska. Among the promoters was the appellant Proctor, who, upon incorporation, was elected a director of the corporation and, in 1951, its secretary. Proctor enlisted the services of the defendant Elton B. Jones, a Seattle attorney, who was also elected a director and became the company's counsel. After its incorporation ATC acquired several telephone exchanges, with approximately 700 subscribers, located in small Alaskan towns. This property was obtained partly for cash and stock, and partly on credit subject to mortgages. The corporation had insufficient funds to meet operating expenses and accruing mortgage obligations, and it was unsuccessful in several attempts to raise the needed capital.

In April 1951, Major William Maxey, the president and general manager of ATC, together with D. Sherman Starr, the vice-president, approached Tellier & Co., a securities firm located in New York City, concerning the possibility of raising needed funds. Tellier & Co. was owned and controlled by the appellant Tellier, who employed between twenty and thirty salesmen to sell over the telephone the securities handled by his firm. When Tellier was approached by the ATC representatives he retained Bernard D. Cahn, an attorney formerly employed by the Securities & Exchange Commission, to represent Tellier & Co. After some discussion between Tellier and the ATC representatives it was decided to offer for public sale an issue of securities of an amount less than $300,000. The reason for this limitation was SEC Regulation A, the General Exemption Regulation, which exempted from SEC registration certain issues of securities if the aggregate offering price of the issue did not exceed $300,000.[1] At Tellier's sug-

[1] See 17 Code of Federal Regulations 230.215 to 230.224.

gestion, and over some objection by Cahn and the New York counsel for ATC, it was decided that the securities to be issued were to be convertible twenty-year debentures carrying interest at an annual rate of 6% payable monthly. Tellier & Co. agreed to act as best-efforts underwriter for these debentures, labeled "Series A," and to receive therefor 20% of the face amount of the securities sold. In addition, it was to receive expenses in an amount not to exceed $20,000.

Cahn's objection to the sale of debentures, rather than of common stock, was based upon the failure of ATC to prove that it had earning capacity. An unaudited financial statement prepared by ATC representatives disclosed that the corporation had barely passed the break-even point during the years 1948-1950.[2] Nevertheless, the statement was used in the offering circular prepared by Cahn and registered with the SEC. Within several months of issuance all of the debentures, which had been offered at par, were sold by Tellier & Co. Subsequently, an independent accounting firm was hired to audit ATC's books. The audit revealed that the profit figures contained in the Series A offering circular were erroneous; and that, in fact, ATC had been losing money since its incorporation. The total deficit up to 1951 was about $40,000, with the result that ATC was insolvent. In 1951 ATC additionally lost in excess of $45,000. At Cahn's insistence the corrected information was sent out to all those who had purchased debentures.

In the meantime, Maxey and Starr had severed all connections with ATC, and Cahn who at one time had been elected a director of the corporation resigned his director-

[2] The unaudited statements for those years reflected net profits as follows:

| | |
|---|---|
| 1948 | $1,053 |
| 1949 | 4,113 |
| 1950 | 3,784 |

ship. The need for additional capital continued to plague ATC, and Proctor and Jones spoke to Cahn about this. Cahn told them that additional public financing was inadvisable as long as the corporation continued to operate at a loss. At Cahn's suggestion attempts were made to obtain private financing. This project failed. ATC was now in debt to the Government for money withheld from employees' pay for employees' income taxes and for excise taxes which had been collected from subscribers. In addition, ATC had not turned over to Alaska Communications System long distance toll charges due it which had been collected from ATC subscribers. Finally, the trustee under the Series A trust indenture complained that although sufficient deposits were made with it, so as to enable it to make timely payment of the monthly interest charges, the corporation nevertheless was not maintaining a sufficient advance deposit to provide such payments for a six months period as it was required to do by the indenture.

In view of ATC's immediate need of funds and its inability to obtain them through a private financing, Proctor then approached Tellier to arrange additional public financing. Cahn repeated an earlier warning against public financing, but Proctor represented that ATC was reducing its losses, that it had reached the break-even point, and that the last quarter of 1952 would show a profit. Cahn's request for an audit was met with a reply by Proctor that this was not possible because ATC still owed the auditors a large fee. He insisted, however, that the corporation's financial status was considerably improved.

Over Cahn's objection it was then decided that ATC should issue additional debentures; and, to placate Cahn, it was agreed that common stock should also be sold. Cahn acquiesced, but urged upon Proctor and Tellier the importance of the representation that ATC was now operating

at a profit. Proctor agreed to supply Cahn with the supporting financial statements, and several months later he did so. An offering circular was prepared by Cahn and Proctor which represented that ATC had reached the break-even point and that "Net proceeds of this issue will be used for expansion and new equipment and for working capital needed to continue operations." Debentures in the face amount of $150,000 were then issued and offered for sale at a 30% discount. These debentures, labeled "Series B," were in form substantially similar to those previously issued except that they matured in ten years rather than twenty. Tellier's underwriting fee was 10% of the face amount plus $10,000 for expenses. Within a month Tellier had sold all of the debentures, though he was unable to sell any substantial percentage of the 40,000 shares of common stock which had been offered at the same time. A later audit revealed that of the $150,000 face amount of these Series B debentures only $9,000 was expended for new equipment, and for working capital.

Then, before another month had passed, the anticipated audit report disclosed that ATC had not made the profit in the last quarter of 1952 that Proctor had represented would be made. In fact, its losses for that quarter were the greatest in its history, and its total loss for the year was nearly $100,000. In addition, contrary to Proctor's optimistic prediction, it lost money during the first quarter of 1953. This audit also showed, as of the date the report was made, that the Government had filed tax liens against substantially all of ATC's property.

So the proceeds of the Series B debentures appear to have benefited ATC no more than did the proceeds of Series A, and another year went by. Then, in December 1953 Proctor wrote Tellier, enclosing a financial statement for the first three quarters of that year, stating that there had "been little, if any, improvement over the previous

period." After setting forth the financial difficulties which the company faced, Proctor again represented that "we believe the corporation is currently operating in the black, * * *"[3] and suggested a sale of additional securities so as to obtain a breathing spell from the bond interest * * *" Tellier contacted Cahn about the possibility of selling additional debentures. Cahn refused to handle the transaction. He warned Tellier that ATC, with its consistent record of losses, was merely borrowing money as a substitute for earning money and suggested that the sale of new debentures to get money to pay interest on the old debentures might be a criminal fraud which could involve Tellier in "great trouble." Nevertheless, Tellier, Proctor and Jones decided to go ahead and issue additional debentures, this time in the face amount of $270,000. The arrangements for the underwriting and the terms of the debentures were substantially similar to those of Series B. The offering circular prepared in connection with the sale of these debentures, denominated "Series C," stated that the "Net proceeds of this issue will be used for expansion and new equipment, for working capital needed to continue operations, and to liquidate delinquent taxes." No mention was made of the tax liens that now had been filed by the Government, of any impending mortgage foreclosures, of the necessity of using a substantial portion of the proceeds for meeting delinquent interest prepayment under the Series A and B indentures, nor of the existence of the defaults under the prior debenture issues.

The last one of the Series C debentures was sold approximately two months after the issue was offered. Shortly thereafter, Proctor assumed the presidency of ATC, and Jones replaced Proctor as Secretary-Treasurer. At Tellier's request Proctor prepared a letter to all the debenture holders which optimistically reported ATC's financial position and informed them that their debentures could

[3] During the year 1953 ATC lost $66,681.18.

be converted into common stock "at a rather substantial premium." The report did not tell the debenture holders, as Tellier was subsequently told by Proctor, that "it was not possible to apply the funds [proceeds of the Series C debentures] as originally allocated." Nor did the report mention the company's insolvency or its continued operating losses. Less than two months after this report was sent out, ATC again went into default on the interest prepayments required to be deposited with the trustee under the Series A, B and C indentures. Also, by this time, the proceeds of the Series C issue were exhausted Consequently, Proctor came to New York in October 1954 to arrange with Tellier for the issuance of a fourth series of debentures. So "Series D" came into being, consisting of ten-year, 6% convertible debentures in a total face amount of $158,000, interest payable monthly with the same prepayment deposit provisions as in Series A, B, and C. The offering circular for this series again stated that "Net proceeds of this issue will be used for expansion and new equipment, for working capital needed to continue operations, and to liquidate delinquent taxes." The circular did not mention, however, that a large portion of the proceeds of the issue were already committed to be deposited with the indenture trustee for interest prepayments required to be so deposited by the terms of all four indentures, and also were committed to pay the trustee its fees and expenses. The offering price of a $100 Series D debenture was $70, and although sales resistance was somewhat greater to this issue, within seven months Tellier had been able to dispose of practically all of this issue, also. ATC continued to lose money, as it had in every year of its existence. Finally, in the autumn of 1955, it filed under Chapter XI of the Bankruptcy Act. In November 1955, a receiver was appointed for the corporation by the United States District Court for the Western District of Washington. Later that month ATC filed an amended petition under Chapter X of the

Bankruptcy Act and the receiver was appointed Trustee in Bankruptcy.

I

The chief witness for the Government was Cahn, Tellier's one-time attorney and one-time director of ATC. Cahn testified to numerous conversations and communications between Tellier, Proctor, Jones, himself and others. With one exception this testimony was admitted without objection by Tellier. The lone objection related to the telephone conversation between Cahn and Tellier in December 1953 in which Cahn warned Tellier against the proposed issuance of a third series of debentures. Tellier urges that this conversation unlike the others to which Cahn testified, was intended as a confidential communication between an attorney and his client concerning the legal affairs of the client. Hence he contends reversible error was committed by the admission of this testimony into evidence. Proper evaluation of Tellier's position requires that we detail with greater specificity the circumstances relating to the conversation objected to.

On December 7, 1953 Proctor wrote Tellier outlining ATC's precarious financial position. He urged upon Tellier the necessity for obtaining additional funds and suggested another public sale of securities. Tellier, after reading Proctor's letter, sent it to Cahn with the following notation:

> "Berney, see if we can put out more bonds. W.F.T."

And then under that is another notation:

> "Another one hundred fifty thousand issue to net them ninety should do the trick or maybe two hundred thousand dollar issue. The common don't sell so it can be withdrawn or let die."
>
> "W.F.T."

Upon receiving the letter, Cahn immediately telephoned Tellier, and warned him not to go ahead with any additional public offerings for to do so would involve him in "great trouble." He pointed out that Proctor's letter proposed to use the proceeds of the new issue for the same purposes that the Series B offering circular represented that the proceeds of the Series B were to be used for, that the representation made in the Series B circular that ATC had reached the break-even point had proven false, that ATC was selling debentures as a substitute for earning money, and that "this selling of bonds to pay back interest by the sale of new bonds will involve you in a Ponzi scheme." Cahn concluded the conversation by informing Tellier that he would write a letter to Tellier, with copies for Proctor and Jones, substantially setting forth the telephone conversation and pointing out that for legal reasons there should not be any public sales at this time. Cahn prepared the letter, with copies, and sent the letter and copies to Tellier. There is some conflict in the record with respect to whether Tellier ever forwarded the copies so received by him to Proctor and Jones. In any event, Tellier wrote Jones on the same day that he had talked to Cahn that

> "Bernie Cahn does not believe it would be possible for you to get a filing through the S.E.C. at this time."

It is of the essence of the attorney-client privilege that it is limited to those communications which are intended to be confidential. "The moment confidence ceases," said Lord Eldon, "privilege ceases." *Parkhurst* v. *Lowten,* 2 Swanst. 194, 216 (1819). Consult 8 Wigmore on Evidence §§2311-16 (3rd ed. 1940). Thus it is well established that communications between an attorney and his client, though made privately, are not privileged if it was understood that the information communicated in the conversation was to be conveyed to others. *In re Fisher,* 51 F. 2d 424 (S. D. N. Y. 1931); *Wilcoxon* v. *United States,* 231 F. 2d

384 (10 Cir. 1956), cert. denied, 351 U. S. 943; *United States* v. *Shibley*, 112 F. Supp. 734 (S. D. Cal. 1953).

We conclude that Cahn's advice to Tellier was not privileged from disclosure at the trial, for, under the circumstances presented in the record, it is clear that this advice was not understood by either Cahn or Tellier to be confidential. The evidence establishes that Tellier expected Cahn to prepare a letter which was to set forth Cahn's objections to the issuance of additional debentures and which was to be forwarded to Proctor and Jones for their enlightenment. The letter which Cahn did in fact prepare and which was admitted into evidence without objection, is further evidence that Cahn and Tellier understood that the substance of their telephone conversation was to to be communicated to Proctor and Jones. That letter recited the substance of what Cahn had told Tellier in the telephone conversation, *i.e.*, that certain statements made in the Series B offering circular had proven false, that Proctor proposed to use the proceeds of the new issuance for the same purposes as the Series B proceeds were to have been used for, and that on the basis of several additional factors Cahn had "some trouble understanding how we can hold out any basis for the public to invest in more debentures." The letter contained Cahn's ultimate conclusion, as he had previously informed Tellier, that the proposed issuance raised "very serious legal problems" and that neither he nor Tellier "should participate in any further debenture financing for the Company, at least under present circumstances."

The fact that the copies of this letter prepared for them may never have been sent by Tellier to Proctor and Jones is of no relevance. The fact that it was prepared demonstrates the understanding which Cahn and Tellier had as to the confidentialness of the prior telephone conversation. Nor do we attach any significance to the fact that Cahn's letter did not refer to the proposed issuance

as constituting a "Ponzi scheme," a phrase Cahn used in the telephone talk. That Cahn chose to couch his letter in more formal language than he used during his telephone conversation with Tellier does not indicate that some portion of the conversation was understood by the parties to be confidential, for the privilege attaches to the substance of a communication and not to the particular words used to express the communication's content. Moreover, where, as here, information is given and it is agreed that it is to be transmitted to a third party, then not only the specific information, but the more detailed circumstances relating to it are subject to disclosure. *United States* v. *Shibley, supra.* Thus, assuming that Cahn's oral warning of a "Ponzi scheme" had not been intended to be communicated further, even then it was not a privileged communication. It was too closely connected with the information which was intended to be communicated to Proctor and Jones to be severed from the entire subject matter of which it was contemplated that Proctor and Jones were to be informed.

We conclude that the trial judge properly admitted Cahn's testimony concerning the telephone conversation between Tellier and him.

## II

Tellier next assigns as error the admission into evidence of the books and records of ATC. These exhibits were admitted during the testimony of the Government's witness Casagrande who had prepared several schedules tracing the proceeds of the debenture sales. Counsel for Tellier objected to the Government's attempt to place these schedules in evidence on the ground that the books and records from which they had been taken were not in evidence. The Government's offer to place the underlying books and records in evidence was met with the objection that they had not been shown to have been kept in the regular course of business as required by 28 U. S. C. §1732. The

trial judge overruled the objection and admitted the books and records into evidence.

An examination of the record indicates that there was indeed insufficient competent evidence to establish that the books and records were kept in the ordinary course of business. Nevertheless, they were admissible under the rule laid down by this court in *United States* v. *Feinberg*, 140 F. 2d 592, 596 (2 Cir. 1944), cert. denied, 322 U. S. 726, where we held that if the defendant has made representations concerning the financial condition of a corporation, the books of that corporation are competent as evidence against him in a mail fraud prosecution. In *Feinberg* the authenticity of the corporate books and records was foreclosed. In the present case, however, Tellier, while not questioning the authenticity of the books and records introduced into evidence as those of ATC, urges that authenticity has not been established by competent evidence. Hence, he contends, they were not admissible even under the *Feinberg* rule. Tellier's contention appears to be based upon the assumption that the authenticity of the records was for the court to determine and, consequently, that they were inadmissible until the Government had established authenticity by competent proof. This assumption is erroneous. The issue of authenticity was for the jury once a *prima facie* case had been made by the Government. 7 Wigmore on Evidence §2135 (3rd ed. 1940); Model Code of Evidence, Rule 601(a) (1942).

Consequently, we need only determine whether there was sufficient evidence of authenticity to make out a *prima facie* case for the genuineness of the documents. We have no hesitation in holding that there was. Some of the documents were identified by ATC's bookkeeper as being the records of the corporation. In addition, Casagrande's testimony was sufficient evidence from which the jury might have found that the books and records were authentic. Casagrande could not, of course, testify as to genuineness

as did ATC's bookkeeper, from first hand knowledge. He could and did, however, testify of his own knowledge that the books and records purported to be those of ATC, that they were records which as an accountant he was accustomed to seeing kept by a corporation, and that the books and records were found by him at the office of the corporation. Clearly, the testimony of ATC's bookkeeper and Casagrande was sufficient to sustain a finding of the authenticity of the books and records introduced by the Government. Consequently, the trial judge correctly ruled as to the admissibility of these documents.

III

The indictment charged Tellier and his co-defendants with having defrauded the purchasers of the Series A, B, C, and D debentures " * * * by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made in the light of the circumstances under which they were made not misleading * * * " At the trial evidence was proffered by the defendants bearing upon the financial condition of ATC during the years 1956 and 1957, after it was in the hands of a trustee in bankruptcy. This evidence was excluded by the trial judge on the grounds of irrelevancy, and these rulings are now urged by Tellier as constituting error requiring reversal.

We cannot agree. To begin with, the gist of the charges against the defendants was not, as Tellier suggests, that they falsely represented that ATC would eventually be prosperous. The tenor of the false representations charged were the statements and omissions concerning the current condition of the corporation. The falsity of these representations and the misleading effect of the omissions could not be altered by proof that ATC was operating at a profit at the time of trial, or that rate increases had been granted at some time after the defendants had relinquished control

to a trustee in bankruptcy. Similarly, Tellier's belief in the eventual prosperity of the corporation could not serve to lessen the culpability of his conduct. Even more important, however, is the fact that in November of 1955 ATC was placed in the hands of a trustee in bankruptcy, and, in reorganization, the corporation was operating under such radically altered conditions that it was in effect a different entity than that which it had been when the representations were made. It was not operating with the overwhelming burden of payments of debt-service which had so plagued it previously. No possible purpose could have been served by admitting evidence of the corporation's financial position during 1956 and 1957.

## IV

The remaining issues raised by Tellier need not detain us long, for they are clearly without merit. On cross-examination by Tellier's counsel, a witness for the prosecution referred to memoranda which the witness had prepared. Tellier's counsel inquired whether these memoranda were available, to which the witness replied that they were. Tellier's counsel did not, however, request that the memoranda be made available to him. Under the circumstances, *Jencks* v. *United States*, 353 U.S. 657 (1957), now modified by 18 U. S. C. §3500, does not require reversal.

Nor is reversal required by the refusal of the trial judge to give the jury the following instruction Tellier requested.

> "While it is your duty to confer with your fellow jurors and discuss the evidence with them, your verdict must represent the real judgment and honest conclusion of each of you, and I charge you that each of you has the duty of arriving at your conclusions separately and that no one of you may surrender his earnest belief, if based upon the evidence, merely for the purpose of preventing a disagreement."

This charge, insofar as it informs the jury that "each of you has the duty of arriving at your conclusions separately," is not a correct statement of the law. As the Supreme Court indicated in *Allen* v. *United States*, 164 U. S. 492, 501 (1896), the jury's verdict is to be reached in concert. See also, *Papadakis* v. *United States*, 208 F. 2d 945 (9 Cir. 1953). An individual juror has a duty not only to confer with his fellow jurors and to discuss the evidence with them, but also to approach the jury deliberations with a willingness to recognize the validity of each juror's opinion. Tellier's requested instruction is erroneous because it fails to convey this latter point. It might well be interpreted by a juror as an invitation to adhere to his own approach to the case and merely to go through the form of listening to the views of his fellow jurors. In any event, even if the requested instruction had been unexceptionally phrased, we think that the propriety of charging it was within the discretion of the trial court. Although an instruction somewhat similar to that requested by Tellier has occasionally been given as part of the charge-in-chief, see, *e.g.*, the court's charge in *United States* v. *Reid*, 210 Fed. 486 at 494 (D. Del. 1913), and *United States* v. *Henney*, 90 Fed. 257 at 274 (D. Del. 1898), it would appear that it more customarily has been given as a supplemental charge after the jury has reported tentative disagreement and has been instructed that it is a jury's duty to reach a verdict if they are capable of conscientiously doing so.[4] Where, as here, there is an absence of circumstances indicating that such an instruction would be helpful to the jury, the decision of whether or not it should be given is within the discretion of the trial judge. We have no reason to doubt that he exercised that discretion wisely.

[4] See *Allen* v. *United States*, *supra*; *Orton* v. *United States*, 221 F. 2d 632 (4 Cir. 1955); *Wolin* v. *United States*, 211 F. 2d 770 (4 Cir. 1954); *United States* v. *Samuel Dunkel & Co.*, 173 F. 2d 506 (2 Cir. 1949).

## V

We turn next to the evidence bearing upon the guilt of the appellant Proctor. An examination of the record indicates that the evidence against him is clearly sufficient to sustain the verdict of guilty. Proctor's attack upon the evidence is two-pronged. He contends first that the evidence does not warrant a jury finding that the offering circulars mailed to purchasers of the debentures were misleading. He also urges that there is insufficient evidence to justify a jury finding that he participated in and had knowledge of the fraud that was perpetrated upon the public.

The first of Proctor's contentions is frivolous, as appears from even a cursory reading of the record. The material misstatements of fact in the circulars, as well as the failure to disclose material facts that should have been disclosed, were misrepresentations of precisely the kind it is the purpose of the fraud statutes to protect the public against. And there was adequate evidence from which the jury could find that Proctor's knowledge of and participation in the fraud were proven beyond a reasonable doubt. Proctor was one of the founders of ATC, and, together with the defendant Jones whom he brought into the corporation, he controlled it from 1951 until 1955 when the bankruptcy petition was filed. As secretary of the corporation, and later as its president, he was the main link in communication between ATC and Tellier during all times relevant to the issuance and sales of the Series B, C and D debentures. Whether or not Proctor was aware of the high pressure tactics employed by Tellier to sell the debentures,[5] the active role which Proctor played in the affairs of the corporation surely justified the jury in

[5] Since Tellier does not maintain that there was insufficient evidence to convict him, we have not dealt at any length in this opinion with his activities but have limited ourselves to discussing his claims of specific error.

believing that he was aware of the fraud perpetrated upon the purchasers of the debentures.

To be sure, Proctor never sold any of the debentures, and the jury was so charged. Nevertheless, his participation in the fraud was convincingly established. It was Proctor's representation that ATC had reached the break-even point and that it had made a profit in the last quarter of 1952 which paved the way for the issuance of the Series B debentures. In view of repeated and insistent warnings by Cahn about the necessity that ATC be operating at a profit before these additional debentures were sold to the public, it cannot be successfully maintained that Proctor was unaware of the materiality of this representation, or of the materiality of the similar representation which he made prior to the issuance of the Series C debentures. Proctor's active role in the fraud is further demonstrated by the letter which he sent out to all debenture holders on August 23, 1954 informing them that they could convert their holdings into stock at a "rather substantial premium." Proctor seeks to avoid the damaging effect of this letter on the ground that the record discloses that none of the recipients of this letter exercised their conversion rights. It was, however, permissible for the jury to find that the purpose of the letter was to pave the way for the sale of the Series D debentures which the public did buy. The reasonableness of this inference appears from the fact that Proctor's letter was written approximately two months after Tellier had written Proctor in June 1954, "Better start building those Bondholders *now* & every month from now on for the next issue," and arrangements for the "next issue," Series D, were initiated approximately two months after Proctor's letter was sent out.

We think it is unnecessary to recite the evidence against Proctor in further detail. The evidence which we have discussed and additional evidence in the record is wholly consistent with the jury's verdict that Proctor knowingly

participated in a scheme whereby the public was fraudulently induced to invest over $700,000 in the debentures of an insolvent corporation which at no time during its history operated at a profit.

VI

We conclude that the trial of the appellant Tellier was free of error and that there was sufficient evidence to sustain the verdicts against him and the appellant Proctor. The judgment below is affirmed.

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LUMBARD, *Circuit Judge* (dissenting):

I dissent and vote to reverse Tellier's conviction as I cannot agree with Judge Waterman's conclusion that Cahn's "Ponzi scheme" warning to Tellier was properly admitted on the ground that Cahn's advice to Tellier was not understood to be confidential.

On the contrary, from the tone and content of the letter which Cahn immediately afterwards wrote to Tellier, for the purpose of forwarding to Proctor and Jones, it seems to me that the parties understood that what would be disclosed to them would be couched in terms of what was inadvisable rather than what might be fraudulent and criminal. The occasion required plain speaking by Cahn and he spoke to Tellier in terms which would be clearly understood by one in the business of selling securities. When he said that further selling of bonds would "involve [Tellier] in a Ponzi scheme" he was in effect saying that if he did this he could go to jail as Ponzi did.

Such a blunt warning is precisely the kind of advice that an attorney should give to a client who hovers on the brink of questionable financial practices. But from the very nature of the occasion which requires such a warning, it is well understood that it is the kind of speaking which usually does not take place before third persons and which

is not intended for other ears or eyes. The majority opinion means that an attorney by his very act of warning a client against imprudent and unlawful action is placing himself in the position of principal witness against the client he seeks to aid. 8 Wigmore on Evidence §2291, p. 550 (3d Ed. 1940).

If in these circumstances the attorney can be made to disclose what he said, it follows an attorney will not dare to speak bluntly and forthrightly to his client and much good that may flow from the confidential nature of the relationship will be lost. *Cf.* 34 Neb. L. R. 538, 540 (1955).

Thus it seems to me that the reasoning of the majority sucks all the vitality and usefulness from the attorney-client privilege; it whittles the privilege to nothing and, worse still, it makes the attorney a witness against his client.

There is a great public interest in preserving this relationship and encouraging a frank exchange between attorney and client. In the overwhelming majority of cases the client follows the attorney's advice. Obviously frank expression of opinion, including such simile, metaphor and emphasis as seems appropriate, increases the likelihood that the attorney's advice will be heeded by the client. Any diminution of the protection which withdraws the veil of secrecy, where it is not crystal clear and explicit that both attorney and client understand that the very words of a private conversation are to be communicated to others, defeats the salutary purpose of the privilege.

Here it is abundantly clear that what was to be communicated to Proctor and Jones was to be a watered-down version couched in lawyer-like language. The letter did not say that issuing Series C debentures would be fraudulent and criminal; it merely pointed out that further issuance of similar debentures was highly inadvisable and unwarranted unless and until certain questions could be answered.

Cahn first related his telephone talk with Tellier on December 17 or 18, 1953. He advised Tellier not to become involved in the issue of a new series of bonds for the Alaska Telephone Corporation, since "* * * Alaska * * * is selling bonds to stay alive, to keep going as a substitute for earning money." Cahn said he warned Tellier in these words: "On that basis, if you sell bonds, you are merely selling additional bonds instead of having the company make money. And this selling of bonds to pay back interest by the sale of new bonds will involve you in a Ponzi scheme."

This forceful language is a far cry from the detailed lawyer-like letter which Cahn sent to Tellier, dated December 23, 1953, and which may be quoted in part as follows:

"Dear Walter:

This will acknowledge receipt from you of the letter from Bert Proctor of Alaska Telephone Corporation dated December 7th requesting assistance in the current emergency confronting the company.

* * * * * * *

In your accompanying note you indicate that you will be unable to sell any common stock and inquire whether the company can issue some more debentures, in the maximum principal amount of $150,000, to $200,000.

*I am strongly of the opinion that it is unsound for this company to sell any more bonds.*

The company has demonstrated no ability whatsoever to earn anything, and in fact has sustained a startingly [sic] consistent record of losses since its inception. Under the circumstances, *I think there are very serious legal problems as well as practical financial problems involved in selling any more debentures.*

* * * * * * *

*In any event, I feel very strongly that neither of us should participate in any further debenture financ-*

*ing for the company, at least under present circumstances.*

* * * * * *

In the event that you should write to Proctor and Jones, there are some questions which I think must be cleared up before we can even consider going ahead. As an example, I suggest that some of the following questions must be answered:"

(The letter then listed five matters which required explanation or reconciliation.)

* * * * * *

"Nothing that I say is intended as a reflection in any way on Jones, Proctor or the other officers. I know they have done all they can. This is a tough situation. *However, there is not enough in the picture to justify any further debenture sales.* As I stated above, I think this is the time for the company to raise private capital to take over its current difficulties. Public capital should await a demonstration of the company's earning power. *When I was in Seattle last March, I told Proctor and Jones that, in my opinion, no further public financing was possible under any circumstances unless and until the company demonstrated earning power. I still feel the same way.*

Best regards, sincerely."

(Emphasis added.)

While it may seem to be merely a matter of degree, the difference between the talk and the letter is the essence. It is the difference between a warning against felonious conduct and measures which would raise "very serious legal problems," *i.e.* responsibility measured by a jail term rather than by dollars.

Cahn's letter was to take Tellier "off the hook," *i.e.* to give lawyer's reasons why the debentures should not be issued; it was not intended to be and it was not a warning to desist because of possible criminal prosecution. But in any event it was not intended to convey and it did not

convey, the blunt prophetic language of the Cahn-Tellier telephone talk. Obviously it would serve no purpose, either of Tellier or Cahn, to pass along Cahn's colorful characterization of a further issue as a "Ponzi scheme." That he did not put "Ponzi scheme" or any intimation of possible criminal consequences in the letter seems to me to be conclusive proof of that.

The mere fact that some conclusions of the attorney-client exchange are to be conveyed to others is not an excuse or a reason for saying that the parties did not intend any part of the exchange to be confidential. Such reasoning is contrary to the facts of life and to the implicit nature of man-to-man speaking; it eats the heart out of the attorney-client relationship. The privilege of the attorney-client relationship attaches to the particular words used or it is no privilege at all.

The majority opinion makes the further argument that even if Cahn's "Ponzi scheme" warning had not been intended to be communicated further, nevertheless it was not privileged because what Cahn said to Tellier "was too closely connected with the information which was intended to be communicated to Proctor and Jones" to be severed from that concerning which they were to be informed.

Few talks between attorney and client could ever survive such a test. How could it ever be said that the connection was not a close one? It makes no difference how close the connection might be, what is said privately should be protected unless the client clearly consents to further communication. See *Connecticut Mutual Life Insurance Co.* v. *Shields*, 18 F. R. D. 448, 451 (S. D. N. Y. 1955); New York Civil Practice Act §354; *People* v. *Patrick*, 182 N. Y. 131, 175 (1905); Richardson on Evidence §436 (8 Ed., Prince, 1955). Here, where a letter in writing followed the talk, that seems to me, absent further proof, to be confirmation that the client never intended or consented to

further communication of the talk, other than as contained in the letter, and that the attorney so understood it.

If the admission of the evidence was error, I think it follows that it was so harmful to Tellier's defense that his conviction should be reversed. Whatever doubts the jury may have entertained (the first trial had resulted in a hung jury), may well have been resolved by the "Ponzi scheme" talk. The fact that Tellier's own lawyer gave so unequivocal and memorable a warning of what Tellier would be doing if he persisted with more such financing on the basis of such representations as were made in view of the facts known to him can hardly be said to be merely cumulative even in so lengthy a trial with its abundant evidence to support the verdict. I would reverse Tellier's conviction.

## APPENDIX B

## JUDGMENTS BELOW

### (1) Original Judgment

UNITED STATES COURT OF APPEALS

For The

SECOND CIRCUIT

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At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the sixth day of May one thousand nine hundred and fifty-eight.

Present:

HON. HAROLD R. MEDINA
HON. J. EDWARD LUMBARD
HON. STERRY R. WATERMAN
*Circuit Judges.*

United States of America,
*Appellee,*

v.

Walter F. Tellier, Albert Joseph Proctor,
*Defendants-Appellants*

Elton B. Jones and
Alaska Telephone Corporation,
*Defendants*

Appeal from the United States District Court for the Eastern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Eastern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgments of said District Court be and they hereby are affirmed.

A. DANIEL FUSARO
Clerk

**(2) Judgment on Petition for Rehearing**

[Title of Court omitted]

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the twenty-eighth day of May, one thousand nine hundred and fifty-eight.

Present:

HON. HAROLD R. MEDINA
HON. J. EDWARD LUMBARD
HON. STERRY R. WATERMAN
*Circuit Judges.*

[Title of Case omitted]

A petition for a rehearing with a request for a rehearing en banc having been filed herein by counsel for the appellant Walter F. Tellier,

Upon consideration thereof, it is

Ordered that said petition be and hereby is denied.

A. DANIEL FUSARO
Clerk

## APPENDIX C

## COLLOQUY REGARDING ADMISSIBILITY OF THE TESTIMONY OF THE GOVERNMENT WITNESS CAHN AGAINST HIS CLIENT, THE PETITIONER TELLIER.

[From pp. 344-360 of the minutes of testimony; see Appendix for Tellier and Proctor, p. 180a]

(The jury thereupon retired from the court room.)

The Court: Now, we have gotten this far, that the witness testified that after reading that letter, he telephoned to Mr. Tellier.

Mr. Windels: Yes, your Honor.

The Court: The question is, what did you say and what did he say?

Mr. Windels: Yes, your Honor.

The Court: That is what we are talking about.

Mr. Windels: Yes, it is.

The Court: That is objected to by Mr. Burke. Now, suppose we let Mr. Burke state his objection.

Mr. Burke: My objection is that this is a confidential communication between attorney and client, and the conversation that took place was of such a nature that it was obviously intended to be confidential, and is very damaging to the defendant Tellier.

The Court: Well, Mr. Burke, haven't we received testimony right along of the same character?

Mr. Burke: No, your Honor, and at the time the first conversation between Mr. Tellier and Mr. Cahn was [345] offered, before the Series A issue, I then respectfully directed your Honor's attention to the fact that I was not objecting to such conversation because in my view they did not contain anything that was intended to be of a confidential nature; but I did not wish my silence to be construed as a waiver when the time did arrive when I believed a confidential communication was to be offered. And in my view, everything that has been testified to in

the way of conversations between Mr. Tellier and Mr. Cahn up to this point was not of a nature intended to be confidential between them.

The conversation which is now about to be offered is entirely different in character from any of the previous conversations, and if I may say so, consists in substance of a statement by the witness to Mr. Tellier that to do any more financing for the Alaska Telephone Corporation would be a criminal fraud.

It is for that reason I say to your Honor that this conversation is entirely different from any previous conversation offered.

The Court: What do you say, Mr. Windels?

Mr. Windels: If your Honor please, at the [346] first trial this evidence was admitted and therefore I do not think it can be said that there is anything about it which is not known and a matter of public record. And I believe that the Federal Rule as to privilege is not a privilege against having someone appearing as a witness against him, but a privilege directed against the disclosure of confidential information. Once the information has been disclosed, it is not longer confidential; and I believe that constitutes a removal of the privilege, but more than that, your Honor, I have here two documents signed by Mr. Tellier, and given to agents of the Securities & Exchange Commission, at the time they were conducting their investigation into this matter.

The first one is dated October 10th, and written across the top, apparently in Mr. Tellier's handwriting, is: To whom it may concern: I hereby authorize and direct Bernard D. Cahn to make available his files and records to the Securities & Exchange Commission concerning transactions with Alaska Telephone Corporation and answer any questions that may be put to him concerning such transactions.

[347] And then in addition I have a letter on Mr. Tellier's letterhead dated October 10, 1955, addressed to

Bernard Cahn, Esq., 30 Broad Street, New York, N. Y.:

Dear Mr. Cahn:

I hereby authorize and direct you to make available to the Securities & Exchange Commission all files and records which you may have concerning transactions between Walter F. Tellier, and Tellier & Co., and Alaska Telephone Corporation, or any officer or director thereof. And to answer any questions that may be put to you by duly qualified representatives of the Securities & Exchange Commission concerning any such transactions.

Therefore the information is no longer confidential, your Honor. The privilege has been waived.

Mr. Burke: May I see those documents?

Mr. Windels: Surely.

Mr. Burke: In the first place, with respect to Mr. Windels' comment as to the testimony at the prior trial in this case, I should say I did object to this question, and the Court overruled my objection and admitted the testimony, in my view, erroneously.

[348] The publication of the testimony under such circumstances—it would be to remove the privilege by a bootstrap operation, if I can use Mr. Cahn's words; because the Court erred then to admit the privileged communication, it does not become not error now, because it was then admitted.

So far as these two documents are concerned, on Mr. Windels' statement, and by the language of them also, these were furnished to the Securities & Exchange Commission and authorized the Securities & Exchange Commission to get this information. They do not constitute a waiver for the purpose of what we are now confronted with of a criminal trial, or being introduced into evidence in court, by their terms.

In the second place, they are read into the record by Mr. Windels without any of the surrounding circumstances.

It is the defendant's contention that these documents were obtained from him by duress in the form of threats

at the time they were obtained, and they are for that reason therefore ineffective as waivers of the privilege also.

And in the third place, also, that such a waiver, [349] if it be a waiver, out of court, does not constitute a waiver that would make such testimony admissible offered at a criminal trial.

The Court: Now, to deal with one aspect of it, of what you just said, you say these are being read into the record. They are not being read into the record of the trial.

Mr. Burke: No, sir.

The Court: This is a record being made of an argument held in the absence of the jury.

Mr. Burke: By all means.

The Court: I should suppose that if the occasion should arise in the future for printing the trial record, this would not appear as part of it.

For ready reference, that might appear, perhaps, in the briefs of counsel. But I guess there would be an agreement at this time that what is now taking place is not part of the trial record.

Is that so?

Mr. Windels: I agree to that.

The Court: Now, that clarifies that point.

Now, as to the impact of the waiver, I should be inclined to go along with you. The waiver was [350] in its terms restricted to an investigation perhaps being conducted by the Securities & Exchange Commission. And I think the waiver would be restricted to its very obvious purpose. Therefore, I agree with you thus far.

It seems to me, however, that it is a mistake, Mr. Burke, if I may say so, without giving offense, for counsel to in one breath say I do not object to this testimony on the ground that it tends to violate the confidential privileges, but I am reserving for myself the right to make that assertion at some future time, and then permit testimony to go in which does not vary in its essence to that which is now sought to be adduced.

Do I make that clear to you?

Mr. Burke: I do understand what you Honor says.

The Court: Now, that being so, it seems to me that the Court is entitled to consult the record thus far made, and to find that the objection based upon the alleged violation of the confidential relation has not thus far been offered, not because it would not be appropriate, but because the evidence sought to be developed would not be harmful. That [351] is the point upon which counsel now relies. And I do not think that it is a sufficient reason for sustaining the objection.

Mr. Burke: Would your Honor permit me to reply briefly?

The Court: Surely.

Mr. Burke: Your Honor states in substance, as I understand it, that counsel's reason for not objecting hitherto was that the evidence was not damaging in effect, and that now counsel objects because he expects that the evidence will be damaging.

The Court: Absolutely.

Mr. Burke: And I say the reason that I have not hitherto objected, and I believe I have made it clear on the record, that is, at the beginning of this witness' testimony, is not that I did not consider the testimony damaging, but I did not consider that any of the conversations were intended by either Mr. Cahn or the client to be of a confidential nature.

And it is my understanding of the privilege that it only applies to conversations intended by the parties to be confidential in nature, and there-[352]fore my reason for not objecting, if I may respectfully say so, is not what your Honor said, but was because none of these conversations I considered to be of a confidential nature, or were intended to be so.

Your Honor says that they do not differ in essence from that which is now being offered. And I disagree with it, because it appears to me that there is a great

degree of difference between any facts heretofore taken, and the one now being offered, in that in none of the previous conversations did the witness Cahn say to his client: If you do so and so, you will be committing a crime. Whereas, now, this is in substance what the witness will testify to. And we are involved in a case where the defendant proceeded to do what the lawyer warned him against doing.

And perhaps it is the essence of the charge against him.

I say to your Honor that there is a very great difference between the previous conversations, which did not consist of such a dire warning, and with respect to the one that is being offered.

The Court: Mr. Burke, I would say it seems to [353] me it is a question of degree.

It seems to me that the advice thus far which Mr. Cahn gave to Mr. Tellier was of the same general character as that which is now sought to be adduced, and the fact that Mr. Cahn in his earlier advice did not use the extreme language that you anticipate that he will use in connection with this question, does not change the essential relationship of the parties.

Mr. Tellier was consulting Mr. Cahn, as his attorney, in connection with the public offering of these securities. Now, there is implicit in that that Mr. Cahn should assume a responsibility of pointing out what he regarded to be the requirements of the law.

Now, that is all that is involved in the answer to this question, the anticipated answer. It merely varies in the fact that you anticipate; that Mr. Cahn is going to call the law by name.

[354] I do not think that is an objection in principle.

Mr. Burke: Well, the previous conversations that bear any resemblance to this one, according to my recollection of the testimony, are of the following nature, that from time to time, Mr. Cahn says that he stated to Mr. Tellier that he thought in some instances that stock should be

sold instead of debentures; in other instances, that he thought a private syndicate should purchase stock, instead of any public sale of the stock, but in no case does the witness Cahn say to him that it is for any other reason other than financial judgment of Mr. Cahn.

In none of the previous conversations did he say anything even suggesting, in my view, to the client that it would be a violation of law for him to do so.

The Court: I could not have thought of suggesting that you had not been paying attention to the testimony. But your argument now suggests that is so.

On several occasions Mr. Cahn has pointed out that in his judgment it was necessary, in connection [355] with the public offering of these securities, that certain financial information should be accurately set forth. You heard that, didn't you?

That has nothing to do with the possibility of selling. It has to o with the purely legal aspects of the anticipated transaction.

I do not want to prolong our debate, and I would like you to believe, Mr. Burke, that I am seriously considering your objection, and in overruling it, I am not intending to treat it casually.

Do you want a recess for five minutes?

Mr. Burke: Yes.

Mr. Kole: May I then take up a matter in connection with that when we return?

The Court: Would you rather do that now?

Mr. Kole: It would just take a minute.

The nature of this testimony that is anticipated is so serious, that even if communicated between attorney and client, and even if the client should waive the privilege, I think clearly that that wouldn't be binding in any way upon Mr. Proctor, whom I represent, and my only concern is that if such testimony is admitted, it be under proper instruction from the Court to the Jury as to its [356] effect on the other defendant.

The Court: Mr. Kole, it will be admitted on the same theory that all testimony thus far in the case, which involved that which one defendant is said to have said or been told, is presented.

In other words, each defendant will have the right to move to strike in the absence of a conspiracy.

Mr. Kole: I make the point, your Honor, that this is just a bit different from the other situations, because in no sense, even if a conspiracy is said to have existed and definitely proved, could it be said that a confidential communication between an attorney and his client, advising the client of what the law is, constituted in any way an overt act.

The Court: I do not think it is offered on that theory. I think the materiality of the tetsimony would lie in the fact that one defendant was apprised that if he did a certain thing a certain legal result would ensue.

Now, if it be the fact that at that moment of time he was a member of the conspiracy, he then would have had the right to withdraw, or he would [357] also have had the right to notify his associates that there was a danger that had been pointed out to him.

I do not think that that is a good argument against the evidence.

Mr. Kole: Just this one last observation, your Honor. I would never make the point that if in fact that communication were also passed on and communicated by the client to the other alleged members of the conspiracy, that of course it be in every way relevant, but a confidential communication of that nature which in no way was communicated, is vital for this reason:

If it had been communicated then the other defendants, too, knowing of it, would have had an opportunity to withdraw from the conspiracy. That is the significance of it.

The Court: I shall be quite willing to tell the jury that in weighing this testimony they are not to visit the testimony upon either Jones or Proctor in the absence of,

evidence that either Jones or Proctor was apprised of the fact that this particular statement had been made by Cahn to Tellier.

• • • • •

[359] Mr. Burke: So that I may be clear on this matter, your Honor, I understand that the whole argument since the jury withdrew from the court room is not part of the record.

The Court: It is not part of the trial record, that is correct.

Mr. Windels: Yes. Your Honor pointed out that if necessary this matter could be introduced in an appendix to any brief before the Circuit Court, or whatever court it would be.

[360] Mr. Burke: I just wanted the record to show that I did object upon the ground of privilege and that the objection was overruled.

The Court: Yes.

(Thereupon at 3:15 o'clock P. M., the jury returned to the court room.)

## APPENDIX D

### GOVERNMENT EXHIBIT 71

This consists of photostatic copies of the following items that purportedly are:

1. Ledger and journal in respect of 1952 (170 pages).
2. Adjusting journal entries in respect of the first three quarters of 1952 (22 pages).
3. Reconciliation of accounts payable in respect of the fourth quarter of 1952—worksheets (20 pages).
4. Ledger in respect of 1953 (101 pages).
5. Journal entries in respect of the fourth quarter of 1953—worksheets (4 pages).
6. Journal entries in respect of the first quarter of 1953; record of checks drawn April 1953; cash receipts record in respect of the second quarter of 1953 (19 pages).
7. Journal entries in respect of 1953 (21 pages).
8. Journal and ledger (part) in respect of 1954 with some worksheets (107 pages).
9. Journal entries in respect of the second quarter of 1954 (5 pages).
10. Journal entries in respect of the third quarter of 1954 (6 pages).
11. Journal entries in respect of the first quarter of 1954 (10 pages).
12. Journal entries in respect of the fourth quarter of 1954 (9 pages).
13. Detail of accounts payable at December 31, 1954—worksheet.

14. Ledger in respect of 1955 with entries to September 30 (94 pages).

15. Journal—cash book (part) in respect of 1955. (12 pages).

16. Journal entries in respect of the first quarter of 1955 (8 pages).

17. Journal entries in respect of the second quarter of 1955 (8 pages).

18. Three check stubs in May, 1953 on Colonial Trust Co. account.

19. Lybrand billing statement as of December 28, 1954.

20. Billing statements of Shattuck Agency in respect of May, June and July, 1953 and 4 duplicate vouchers on Colonial Trust Co. in payment thereof dated May 28th and June 30th, 1953.

21. Correspondence dated February, March and May, 1953 between A.T.C. by Jones and the Seattle Trust Co. and its attorneys concerning money owed, and 2 duplicate vouchers on Colonial Trust Co. in payment dated June and July, 1953.

22. Duplicate voucher on Colonial Trust Co. dated June 19, 1953, payable to Municipal Utilities.

23. Twenty-five duplicate vouchers on Colonial Trust Co. dated in May, June, July and August, 1953 payable to 20 different creditors together with bills from the creditors, correspondence demanding payment, and letters from the creditors' attorneys demanding payment (73 pages).

24. Exchange of telegrams between Jones and United States Attorney in Alaska, and correspondence from the U. S. Attorney and the War Department concerning a suit brought to collect money owed to the War

Department together with duplicate voucher on Colonial Trust Co. in payment thereof dated July 29, 1953.

25. Correspondence between A.T.C. and its Alaska attorney Mr. Arnall, and with the Behrends Bank together with a duplicate voucher dated August 31, 1953 paid to the bank to release an attachment.

26. Offer in compromise to the Bureau of Internal Revenue dated June 7, 1954 together with 2 duplicate vouchers in payment.

27. Eight duplicate vouchers payable to various creditors dated from April to July, 1954.

28. Six billing statements from the Automatic Electric Co. and 2 duplicate vouchers dated May, 1954 in payment.

29. Bills of the Automatic Electric Co. and the Northern Commercial Co. and 5 duplicate vouchers in payment dated from May to August, 1954.

30. Correspondence between Jones and a director, and between Jones and A.T.C.'s Alaska attorney concerning litigation over a mortgage at Nenana, and 3 duplicate vouchers dated June and July, 1954 in payment (9 pages).

31. Correspondence and exchange of telegrams between A.T.C. and the mortgagees at Petersburg and the mortgagees' attorneys, and duplicate voucher in payment (14 pages).

32. Bank statement of the National Bank of Commerce in respect of August and September 1954 with cancelled checks and deposit slips (13 pages).

33. A number of duplicate vouchers on Colonial Trust Co. together with bills and billing statements of creditors paid thereby, the checks bearing various dates from January to April, 1955.

34. Bank statement of the National Bank of Commerce in respect of March and April, 1955 with deposit slips and cancelled checks.

35. Bank statements of the Colonial Trust Co. from May 6, 1953 to April 18, 1955 (18 pages).

36. Balance sheet and profit and loss statement in respect of 1954.

37. Balance sheet and profit and loss statement in respect of the first quarter of 1954.

38. Balance sheet and profit and loss statement in respect of the first three quarters of 1954, and profit and loss statement in respect of the third quarter of 1954.

39. Balance sheet and profit and loss statement in respect of 1953.